In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 173.

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

vs.

THE RICHMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

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THE RICHMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

QUESTIONS PRESENTED.

I.

Was the Federal District Court prohibited by statute, 28 USC Section 2283, from granting a preliminary injunction against prosecution by respondent of an action by it in a state court to enjoin petitioners and others from picketing and recurrently obstructing the entrances of stores of respondent?

II.

Should petitioners, having submitted to the State Court the question as to the exclusive jurisdiction of the Labor Board, and the issue having been decided adversely to them, be permitted in the case at bar to obtain in the District Court a review of the decision of the State Court?

STATEMENT.

The statement on pages 2-6 of the brief for petitioners is sufficient except as herein corrected and enlarged upon.

In denying petitioners' preliminary injunction (R. 27-28), the District Court made and entered findings of fact and conclusions of law (R. 25-27). Paragraph 11 (R. 27) of such findings discloses that petitioners submitted no evidence in support of their motion for a preliminary injunction. Aside from the allegations in petitioners' complaint in the District Court (R. 16-22) and allegations in the defendants' answer filed in the state court action (R. 11-13), there is no support for the statements in petitioners' brief (p. 3) that the instant case arises out of an organizational campaign of Amalgamated and that the picketing complained of by respondent was wholly peaceful picketing.

The instant case was filed immediately after and as the sole result of the overruling by the State Court of petitioners' motion to dismiss respondent's action therein (R. 26-27, Findings 7, 8 and 9).

In respondent's petition in the state court action (R. 7-8) there are, among others, allegations to the effect that the defendants were causing recurrent picketing demonstrations to be staged immediately in front of the main entrances of picketed stores, [1] as many as twenty persons, at times more, who, singing and shouting, milling about and carrying long poles and balloons on long cords, were creating confusion at, and obstructing the entrances of, the stores so picketed.

The gist of respondent's petition in the state court action is not merely the conspiracy, as is stated on page 4 of petitioners' brief, but is that the defendants in carrying forward the conspiracy, were causing respondent to be

irreparably damaged by the picketing of, and the recurrent obstructing of entrances to, stores of respondent (R. 6-9). In the petition in the state court action it is further alleged in substance that the picketing was done with knowledge on the part of the defendants that it is a commonly accepted belief, acted upon by a substantial part of the general public, that no person may cross a picket line without permission of the picketing union (R. 8).

It is alleged in respondent's petition in the state court action that the picketing complained of took place at the entrances to respondent's stores, all of which were miles removed from either of respondent's factories (R. 4); that neither Amalgamated nor any other labor organization is a representative for purposes of collective bargaining of respondent's employees; that no notice has been given to respondent that defendant Amalgamated or any other labor organization claims to be such representative or to be entitled to be recognized or dealt with as such by respondent; that there was no strike of any of respondent's employees or any labor dispute between respondent and any of its employees (R. 6); and that the picketing complained of had been going on since March 31, 1951 (R. 7). Respondent's action in the state court was not filed until October 18, 1952 (R. 25, Finding 2). As appears in petitioners' brief (p. 6) the picketing complained of was not enjoined by the State Court until after the instant case had entered its appellate phase, i.e., after the order of March 25, 1953, denying the preliminary injunction (R. 27-28).

Respondent's petition in its state court action contains no allegation to the effect that any of the defendants therein were restraining or coercing any of respondent's employees, or to the effect that any of the defendants were causing or attempting to cause respondent to discriminate

against any employee in violation of subsection 8(a)(3) of the National Labor Relations Act as amended.

Respondent's petition in its state court action (R. 9) contains a second cause of action in which it is alleged in substance that the carrying out of the conspiracy described in the first cause of action constitutes a continuing unreasonable restraint of trade in violation of the Ohio anti-trust statutes and of the common law of Ohio.

Although the decision of the Court of Appeals, as well as that of the District Court, is grounded solely on Section 2283, the Court of Appeals, in its opinion (R. 30-31) expressly recognizes that a collateral question is involved, which it did not decide. That question is as to whether the subject matter of respondent's petition in the state court action is within the exclusive jurisdiction of the National Labor Relations Board, in view of this Court's decision in *Garner v. Teamsters Union*, 346 U. S. 485.

It is true, as repeatedly emphasized in petitioners' brief (pp. 6, 11, 16, 20, 37, 41), that after the District Court had overruled petitioners' motion for a preliminary injunction, the State Court heard and granted respondent's motion for a temporary injunction against the picketing of respondent's stores. This fact does not appear in the record herein. For its ascertainment, *Richman Bros. Co. v. Clothing Workers*, 51 Ohio Opinions, 145, is cited in petitioners' brief, page 6. This same citation at pages 146, 147 and 150 discloses the facts to be that in the state court hearing the defendants therein, including the petitioners herein, took the position that there was no dispute between the Company and Amalgamated and that the defendants therein were causing the stores to be picketed solely for purposes of advertising the union label and promoting the sale of clothing bearing the union label.

SUMMARY OF ARGUMENT.

I. The preliminary injunction was properly denied because of the prohibition in Section 2283. Being clear, the statute must be given effect in accordance with the terms thereof, in the absence of any overriding Congressional intention to the contrary. Since Section 2283 was enacted after the National Labor Relations Act had been amended by the Labor Management Relations Act, there is no basis for inferring any Congressional intention that it as distinguished from its predecessor, Section 265, should have no application, or should not be enforced in accordance with its terms, in event the subject matter of the state court action were within the exclusive jurisdiction of the National Labor Relations Board.

Section 2283 specifies the only exceptions to the prohibition of the statute, and through the exceptions provides an adequate and serviceable method of preventing the statute's operation from thwarting or impairing enforcement of federal legislative acts, both present and future, and whether the jurisdiction provided for in such acts be exclusively federal or concurrently federal and state. *Capital Service Inc. v. Labor Board*, 347 U. S. 501. By reason of its ancient enactment and its single specified exception, Section 265 presented a wholly different situation with reference to its enforcement, one giving rise to implied amendments or exceptions. *Toucey v. New York Life Insurance Co.*, 314 U. S. 118 and *Bowles v. Willingham*, 321 U. S. 503.

The case at bar is not within any of the three specified exceptions, so it is, therefore, within the prohibition of Section 2283. The first exception does not apply because Congress has not given the requisite express, or even any implied, authorization for the granting of the requested injunction—*Capital Service, Inc. v. Labor Board*, 347 U. S.

501—especially in this action brought by private parties, as distinguished from the National Labor Relations Board which is vested with exclusive initial jurisdiction respecting all matters covered by the National Labor Relations Act, as amended. *Garner v. Teamster Union*, 346 U. S. 485; *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261; and *International Union v. Underwood Corp.* (C. A. 2, No. 182, Jan. 6, 1955) (not yet officially reported), 35 L. R. R. M. 2340.

The second exception does not apply because this action meets neither of the two requisites thereof. First, because of the word "its" in this exception, the jurisdiction to be aided must be the jurisdiction of the District Court, and upon authority of each of the cases last above cited the District Court is without jurisdiction of this action brought by private parties as distinguished from the Board. Second, under the second exception, the granting of the requested injunction must "be necessary in aid of" the District Court's jurisdiction, and, since petitioners' action is the only one before the District Court involving respondent's action and is solely one for the requested injunction, even if it be assumed that the District Court has jurisdiction of this action, still the granting of the requested injunction could not "be necessary in aid of" such assumed jurisdiction so to act. Cf. *Capital Service, Inc. v. Labor Board*, 347 U. S. 501.

The third exception is without application because there exists no judgment, or even claim of judgment, of the District Court, which could be protected or effectuated by the granting of the requested injunction.

II. Petitioners, having submitted to the state court the question as to the exclusive jurisdiction of the Labor Board, and the issue having been decided adversely to

them, should not be permitted in the case at bar to obtain in the District Court a review of the decision of the state court. *American Surety Co. v. Baldwin*, 287 U. S. 156, 164-167, *Davega-City Radio, Inc. v. Boland* (S. D. N. Y.), 23 F. Supp. 969; *United Electrical, etc. v. Westinghouse Electric Corp.* (E. D. Pa.), 65 F. Supp. 420; *International Union v. William D. Baker Co.* (E. D. Pa.), 100 F. Supp. 773; *Furnald v. Glenn* (C. A. 2), 64 Fed. 49; and *General Exporting Co. v. Star Transfer Line* (C. A. 6), 136 F. (2d) 329.

ARGUMENT.

I.

THE PRELIMINARY INJUNCTION WAS PROPERLY DENIED BECAUSE OF THE PROHIBITION IN SECTION 2283, TITLE 28, UNITED STATES CODE.

A. Introductory.

Section 2283 provides:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The statute became effective January 25, 1948, and is a revision[1, 2] of Section 265 of the Judicial Code of 1911.

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[1] *Moore's Commentary on the U. S. Judicial Code* (1949), 395-396 is the source of the following history of the statute. Section 5 of the Act of March 2, 1793, provided in part:

> "* * * nor shall a writ of injunction be granted to stay proceedings in any court of a state." 1 Stat. 333, 334.

This was carried forward as Section 720 of the Revised Statutes of 1874, which was as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a

(*Continued on following page*)

Petitioners' action is one to enjoin respondent from proceeding in its state court action on the ground that the subject matter thereof is within the exclusive jurisdiction of the National Labor Relations Board (R. 16-21; Ps.' Br. p. 5). Jurisdiction of the District Court was by the complaint (R. 16-21) invoked solely under Section 1337[3] of the Judicial Code (28 USC Section 1337) and Section 1651[3] of the Judicial Code (28 USC Section 1651).

It is respondent's position that in view of the clear wording of Section 2283, the prohibition of this statute necessarily came into play because the instant action is not within any of the three exceptions specified therein.

Much of the argument in petitioners' brief is devoted to collateral matters[4] not necessary to a determination of

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(Continued from preceding page)

State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

which became Section 265 of the Judicial Code of 1911, former 28 USC Section 379, without any change, and no change was made until the Code revision in 1948, as the result of which Section 2283 was enacted.

[2] The reviser's notes on Section 2283 (H. Rep. No. 308, 80th Cong., 1st Session, A-181—A-182) are set forth in the Appendix to petitioners' brief, pages 49-50.

[3] Copies of Sections 1337 and 1651 of the Judicial Code are set forth in the Appendix to petitioners' brief (p. 33).

[4] Whether a "deplorable situation" may result if labor unions are prevented by Section 2283 from enjoining state court invasions of the jurisdiction of the National Labor Relations Board, as is contended at length in petitioners' brief (pp. 19-28, 41-42), is a matter for presentation to Congress, not to the courts.

Whether the subject matter of respondent's state court action is within the exclusive jurisdiction of the National Labor Relations Board, as contended in petitioners' brief (pp. 6; 12-19), is a question not directly involved in this proceeding. It was not decided either by the District Court or by the Court of Appeals and in the opinion of the latter it was referred to as being "collaterally involved" (R. 30-31). An answer thereto being unnecessary in determining any question before the Court in this proceeding, this collateral question will receive no further con-

the applicability of Section 2283. As disclosed therein (pp. 19, 28-42), petitioners' brief actually sets forth only two contentions directed at Section 2283. The first is that the statute has no application herein because the subject matter of respondent's petition in the state court action is allegedly within the exclusive jurisdiction of the National Labor Relations Board (Ps.' Br. pp. 28-33). The second is that, in any event, the instant action falls within either the first or the second exception specified in the statute (Ps.' Br. pp. 33-42).

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sideration in this brief, aside from stating some of the reasons which distinguish the situation herein from that in *Garner v. Teamsters Union*, 346 U. S. 485.

Set forth in respondent's state court petition are allegations materially different from those involved in the *Garner* case. For example, there are the allegations referred to in the opinion of the Court of Appeals (R. 31) to the effect that the defendants were causing recurrent picketing demonstrations to be staged immediately in front of the main entrances to picketed stores, by as many as twenty persons, at times more, who, singing and shouting, milling about and carrying long poles and balloons on long cords, were creating confusion at and obstructing the entrances of, the stores so picketed. There are also the allegations in respondent's second cause of action complaining that the carrying out of the conspiracy by the picketing referred to constituted an unreasonable restraint of trade in violation of anti-trust statutes and common law of Ohio.

There are no allegations to the effect that any of the defendants were restraining or coercing any of respondent's employees, or were causing or attempting to cause respondent to encourage membership in their union by "discrimination in regard to hire or tenure of employment or any term or condition of employment," in violation of subsection 8 (a) (3) of the National Labor Relations Act, as amended. The petition does not specify that defendants made any demands on respondent which disclose any particular means by which it was to force its employees to join the union. In this respect the case resembles *Auto Workers v. Wisconsin Board*, 336 U. S. 245 (*infra*, p. 17). The absence of any such allegations from respondent's state court petition prevents the subject matter thereof from falling within the purview of either Section 8 (b) (1) or Section 8 (b) (2) of the National Labor Relations Act, as amended, and consequently distinguishes respondent's state court action from the corresponding state court action involved in the *Garner* case.

B. Under the Terms of Section 2283 the Prohibition of the Statute Has Application Unless the Instant Case is Within One or More of the Three Exceptions Specified Therein.

1. Section 2283 Should be Given Effect in Accordance With the Terms Thereof.

The validity of the statute has not been challenged. The statute is in unmistakably clear language. Directly following the statement of the prohibition are provided the three exceptions which alone will preclude its application. Neither the presence of exclusive federal jurisdiction nor the absence of concurrent jurisdiction on the part of state and federal courts is among the three specified exceptions. To hold that the statute is without application where there is present an exclusive federal jurisdiction would be violative of elementary principles of construction repeatedly adhered to by this Court.

In *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, the Court refused to read into Section 265 an exception which would render inapplicable the prohibition of the statute to so-called relitigation cases therein under consideration. In *Pillsbury v. United Engineering Co.*, 342 U. S. 197, 199, it was said:

> "We are not free, under the guise of construction, to amend the statute by inserting therein before the work 'injury' the word 'compensable' so as to make 'injury' read as if it were 'disability.' Congress knew the difference between 'disability' and 'injury' and used the words advisedly."

The following is an excerpt from *Ex Parte Collett*, 337 U. S. 55, 61:

> "Petitioner's chief argument proceeds not from one side or the other of the literal boundaries of Sec. 1404 (a), but from its legislative history. The short

answer is that there is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.' *Gemsco v. Walling*, 324 U. S. 244, 260 (1945). This canon of construction has received consistent adherence in our decisions."

In footnote 12 to the concluding sentence of the last above quoted excerpt, the Court further said, page 61:

"The rule as to statutory revisions is the same. * * *"

2. The Contention That the Statute Has No Application Where There is Present an Exclusive Federal Jurisdiction is Unsound.

Quoted in petitioners' brief[7] are excerpts from a few decisions of this Court upon which petitioners predicate the argument that Sections 265 and 2283 have never had any application where there was present an exclusive federal jurisdiction. Respondent maintains that this Court has never so held, at least as to Section 2283, and that even if it has so held as to Section 265, there is no proper basis for any such holding as to Section 2283 in the case at bar.

The review in the *Toucey* case of this Court's decisions involving Section 265 indicates that the Court was apparently of the opinion that it had never so held, otherwise mention thereof would have been made in such review. Of the cases quoted from in petitioners' brief and referred to in footnote 5 hereof, only the *Boucles* case and the *Capital Service* case were decided after the *Toucey* case.

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[7] Page 18 from *Capital Service Inc. v. Labor Board*, 347 U. S. 501, 504; page 28 from *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, 183; page 29 from *Hale v. Bimco Trading Co.*, 306 U. S. 375, 378; and page 30 from *Boucles v. Willingham*, 321 U. S. 503.

That the *Bowles* case constitutes no such holding is demonstrated by this Court's own views as to what had been held in the *Bowles* case, as stated in the following excerpt from *Porter v. Dicken*, 328 U. S. 252, 254-255:

> "While we realize that Sec. 265 embodies a long-standing governmental policy to prevent unnecessary friction between state and federal courts, *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, we still hold as we held in *Bowles v. Willingham*, 321 U. S. 503, that Sec. 205 of the Price Control Act which authorizes the Price Administrator to seek injunctive relief in appropriate courts, including federal district courts, is an implied legislative amendment to Sec. 265, creating an exception to its broad prohibition. This is true because Sec. 205 authorizes the Price Administrator to bring injunction proceedings to enforce the Act in either state or federal courts, and this authority is broad enough to justify an injunction to restrain state court evictions. But if Sec. 265 controls, as the District Court held, the Administrator here could not proceed in the federal court, since there is a proceeding pending in a state court. Since the provisions of the Price Control Act, enacted long after Sec. 265, do not compel the Administrator to go into the state courts but leave him free to seek relief in the federal courts, he was not barred by Sec. 265 from seeking an injunction to restrain an unlawful eviction. Cf. *Hale v. Bimco Trading, Inc.*, 306 U. S. 375."

and the following footnote on page 255, in which the court further said:

> "An alternative reason given for the decision in the Willingham case was that, since the state court there was attempting to enjoin the Administrator from performing his duties under the Act, the District Court had power both under Sec. 205 (a) of the Act and Sec. 24 (1) of the Judicial Code to protect the exclusive federal jurisdiction which Congress had granted. But

> our opinion did not, as the District Court thought, depend entirely on this alternative ground."

It is obvious that the situation in the *Boucles* case was different from that in the instant case. Therein the Administrator sought to enjoin the state proceeding on the ground that the state court was attempting to enjoin him from performing his duties under the Act vesting him with exclusive jurisdiction. Herein petitioners, as private parties, seek to enjoin the state court proceeding on the ground that the subject matter of respondent's petition in the state court action is within the exclusive jurisdiction of the National Labor Relations Board.

Even if the *Boucles* case were to be accepted as a holding that, upon the facts therein, Section 265 was without application by reason of the absence of any concurrent federal and state court jurisdiction, in considering the effect of the conclusion therein reached as applied to the instant case, it should be considered in connection with *Capital Service, Inc. v. Labor Board*, 347 U. S. 501. In the latter case the National Labor Relations Board by action under Section 10 (1) of the National Labor Relations Act, as amended, and after Section 265 had been succeeded by Section 2283, sought and obtained an injunction against the prosecution of a state court action by an employer who had also filed charges with the Board involving a labor union defendant in the state court action. In affirming the Board's right to the injunction, this Court held that the action therein was within the second exception of Section 2283 and, immediately after referring expressly to the *Boucles* case and others, said (p. 505):

> "We do not stop to consider the many questions which have been propounded under this newly worded provision of the Code. One alone suffices for this case. For we conclude that the injunction issued by the Dis-

> trict Court was 'necessary in aid of its jurisdiction' and thus permitted under the exceptions specifically allowed by Congress."

To the first sentence in the above quoted excerpt is a footnote (p. 505) of which the following is the concluding paragraph:

> "In view of our ruling, we find it unnecessary to consider whether, apart from the specific exceptions contained in Sec. 2283, the District Court was justified in enjoining this intrusion on an exclusive federal jurisdiction. Cf. *Bowles v. Willingham*, 321 U. S. 503, 510-511."

It thus appears that in deciding the *Capital Service* case and with the *Bowles* case in mind, this Court nevertheless recognized as an open one the question of whether Section 2283 has application apart from its express exceptions where there is present an exclusive federal jurisdiction, and intentionally left the question undecided. Apparently the question has not been involved in any subsequent decision by this Court.

Even if the concept that the prohibition of Section 265 did not come into play where there was present an exclusive federal jurisdiction, were to be accepted as an established legal principle with reference to the application of Section 265, there is no basis for accepting a corresponding concept in connection with the application of Section 2283. The factual situation in every case where such concept was voiced with reference to Section 265 was wholly different from that in the *Capital Service* case as well as in the instant case. For example, with reference to the *Bowles* case, it must have been the Congressional intention in enacting the Emergency Price Control Act while Section 265 was outstanding and in effect, that enforcement of its provisions should not be hindered by Section 265. Manifestly,

it was with that situation in mind that this Court in the *Boules* case held (p. 510) that the Act therein served as an implied legislative amendment of Section 265 and said (p. 511):

> "The rule expressed in Section 265 which is designed to avoid collisions between state and federal authorities * * * thus does not come into play."

A substantially different Congressional intention, however, must have existed with relation to the application of Section 2283 in cases such as the *Capital Service* and instant cases, because it was enacted after the National Labor Relations Act had been amended by the Labor Management Relations Act.

Section 2283 specifies by its terms the only exceptions to the prohibition it recognizes and by means thereof it provides an adequate and serviceable method of preventing the statute's operation from thwarting or impairing enforcement of federal legislative enactments, both present and future, and whether the jurisdiction provided for in such enactments be exclusively federal or concurrently federal and state. Section 2283, therefore, definitely removes any conceivable basis for even an inference either that any subsequent legislation could impliedly amend its provisions or that Congress did not intend that it, apart from its specified exceptions, should come into play where there is present an exclusive federal jurisdiction.

A wholly different situation existed with reference to Section 265 which specified the single exception as one relating to proceedings in bankruptcy and which in identically the same form had been in effect since 1874 (see *supra*, p. 7, note 1). Except for resorting to the expediency either of inferring that subsequent legislative enactments impliedly amended Section 265, or that Congress did not intend that it, apart from its exception,

should come into play where there was present an exclusive federal jurisdiction (*Toucey v. New York Life Insurance Co.*, 314 U. S. 118, 133-134 and *Boucles v. Willingham*, 321 U. S. 503, 510), the operation of Section 265 with relation to subsequently enacted federal legislative acts might, and probably would, have thwarted or impaired proper enforcement thereof.

These essential and very real differences between Sections 265 and 2283 undoubtedly account for the fact that in the *Boucles* case, involving Section 265, the court unequivocally held that the Emergency Price Control Act impliedly amended Section 265, and having so held, then stated that Section 265 had not come into play because there was present exclusive federal jurisdiction; whereas in *Capital Service Inc. v. Labor Board*, 347 U. S. 501, involving Section 2283, the court relied exclusively upon the second exception therein stated in upholding the injunctive order under appeal therein, after the court had expressly mentioned but chose not to decide whether the concept above referred to as associated exclusively with Section 265 had any application to Section 2283.

These differences between Sections 265 and 2283 render the instant case distinguishable from the *Boucles* case and every other case involving Section 265 in which the court made any reference to the concept previously adverted to. In addition, there are other reasons subsequently herein considered (*infra*, p. 19) for distinguishing the instant case from not only the *Boucles* case and the *Capital Service* case, but each of the other cases referred to in petitioners' brief in which was considered the question of the application of either Section 265 or Section 2283, reference being here made especially to the point that the instant action has been brought by private parties wholly without any authorization under the National Labor Rela-

tions Act as amended, whereas each of the cases on which petitioners rely was brought by a federal agency expressly authorized so to act in connection with legislation which it was charged with the duty of enforcing.

The National Labor Relations Act as amended is an actual source of conflict with respect to federal and state jurisdictional questions. In *Garner v. Teamsters Union* 346 U. S. 485, 488, it was said:

> "The National Labor Management Relations Act, as we have before pointed out, leaves much to the states, though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible."

It therefore appears that under the Act, especially, there is no such exclusive federal jurisdiction as would justify viewing Section 2283, enacted after the Labor Management Relations Act, as a statute limited in its application to situations involving concurrent jurisdiction of federal and state authorities.

Pertinent in this connection is the collateral question in the instant case (and it was so referred to by the Court of Appeals (R. 30-31)) as to whether the recurrent and unannounced obstructing of the entrances to respondent's picketed stores by the Union conduct complained of (R. 7-8), lies on the state or the Labor Board side of the undefined jurisdictional line. Respondent claims that such conduct is subject to state control and for supporting authority relies upon such cases as, for example, *Auto Workers v. Wisconsin Board*, 336 U. S. 245, wherein recurrent and unannounced work stoppages by employees while at work in a plant, as a means of forcing the employer to agreement upon the terms of a proposed labor contract, were determined to be within the area of state jurisdiction.

C. The Instant Case is Not Within Any of the Three Exceptions Specified in Section 2283.

1. The First Exception.

With relation to the first excepton, the prohibition of the statute applies "except as expressly authorized by Act of Congress." Respondent maintains that Congress has not given the requisite express authorization, or even any implied authorization, for the issuance of an injunction under a situation such as is presented by the case at bar, and that, therefore, the first exception is without any application herein.

In petitioners' brief (pp. 10-11; 34-36) it is in effect conceded that there is no express authorization for the granting of an injunction in the case at bar. Nevertheless, the argument is made that implied authorization is enough to satisfy the first exception and that such authorization must be implied from the National Labor Relations Act, as amended, in order to prevent state court interference with the National Labor Relations Board's exclusive jurisdiction.

The end result of petitioners' argument as to the first exception is that the words "as expressly authorized" should be construed to mean "as expressly or impliedly authorized." Any such construction would be violative of the principles of statutory construction previously herein referred to (*supra*, pp. 10-11).

Even if it be assumed, however, that implied authorization is enough to satisfy the first exception, still the instant action would not be within its terms because of the express provisions of the National Labor Relations Act, as amended. The Act, under its express terms, vests exclusive initial jurisdiction in the Board as to all matters covered by its terms. It therefore prohibits any inter-

invention by federal courts except by way of review or on application by the Board. It follows that, since the instant action is one by petitioners, as distinguished from one by the Board, the District Court was not only without any authorization to grant the requested injunction, but it was actually precluded from doing so by express provisions of the National Labor Relations Act vesting the Board with exclusive initial jurisdiction as to all matters covered by its terms. *Garner v. Teamsters Union*, 346 U. S. 485; *Myers v. Bethlehem Ship Building Corp.*, 303 U. S. 41; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261; and *International Union v. Underwood Corp.* (C. A. 2, No. 182, Jan. 6, 1955) (not yet officially reported), 35 L. R. R. M. 2340.

Of the cases cited in petitioners' brief (p. 35) in support of the argument therein as to the alleged application of the first exception, the action in each of the first four[1] was brought by the Price Administrator under authorizing provisions of the Emergency Price Control Act which was therein involved, and in each of the other two[2] was brought by the National Labor Relations Board. Since none of such cited cases involved an action by private parties, as does the case at bar, petitioners' argument here referred to derives no support from any of them.

Also inapplicable to the situation presented in the case at bar are the views set forth in Moore's *Commentary on the U. S. Judicial Code* (1949) 410, upon which petitioners rely in support of their argument with respect

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[1] *Bowles v. Willingham*, 321 U. S. 503; *Fleming v. Rhodes*, 331 U. S. 100; *Porter v. Dicken*, 328 U. S. 252, and *Porter v. Lee*, 328 U. S. 246.

[2] *National Labor Relations Board v. Sunshine Mining Co.* (C. A. 9), 125 F. (2d) 757 and *National Labor Relations Board v. Underwood Machine Co.* (C. A. 1), 198 F. (2d) 93.

to the alleged application of the first and second exceptions (P's.' Br., pp. 10-11; 33-36). Under the views of the author here referred to, the National Labor Relations Act is among "Examples of the statutory authorization which are either sufficiently express to come within the first exception to § 2283 or sufficiently clear to operate within the second exception * * *." That such views are to be confined solely to actions brought by the National Labor Relations Board or other governmental enforcement agency, as distinguished from actions brought by labor unions or other private parties, is demonstrated by the authorities cited in the text referred to (p. 410 and notes). The only cited case which involved the National Labor Relations Act is *NLRB v. Bachelor* (C. A. 7), 120 F. (2d) 574, from the opinion of which (p. 576) the following is an excerpt:

> "* * * the Labor Relations Act intrusted the exclusive power to prevent unfair labor practices with the Board * * *. *Amalgamated Workers v. Consolidated Edison Co.*, 309 U. S. 261, 266-269 * * *."

As so limited, the author's views do not carry even an implication that he is of the opinion that an action for injunctive relief brought by private parties, as distinguished from the Labor Board, comes within the first or second exception specified in Section 2283. A like observation obtains with respect to the views expressed in *The Federal Courts and the Federal System* by Hart and Wechsler (1953) 1076, referred to in petitioners' brief, pages 34 and 36.

With reference to Section 2283, as previously herein pointed out (*supra*, pp. 14-16), there is no proper basis for any "statutory qualifications" (also referred to as "implied qualifications") within the meaning of the quotations as

set forth in petitioners' brief (pp. 10, 34, 35 and 36). In other words, the situation which prevailed with respect to Section 265 was one which permitted exceptions to that Section to be implied from subsequently enacted legislation, whereas with reference to Section 2283, no such situation exists and the only exceptions to the prohibition in the latter statute are those specified by its terms.

To the extent, if any, that there may be any Acts of Congress containing provisions insufficient to qualify under the words "as expressly authorized" in the first exception, the problem presented thereby is one for Congress, not the courts (*Pillsbury v. United Engineering Co.*, 342 U. S. 197, 199; *Ex Parte Collett*, 337 U. S. 55, 77; and *Toucey v. New York Life Insurance Co.*, 214 U. S. 118).

2. The Second Exception.

The second exception, by its terms, removes the prohibition of the statute against a court of the United States granting an injunction to stay proceedings in a state court only "where necessary in aid of its jurisdiction." Because of its phraseology, this exception carries two requisites, each of which must be complied with before it can have any application to remove the prohibition of the statute from petitioners' action.

First, there must be jurisdiction to be aided by the requested staying of respondent's state court action, which jurisdiction, by reason of the presence of the word "its," necessarily means the jurisdiction of the District Court, not that of the National Labor Relations Board. Second, the granting of the requested injunction to stay respondent's state court action must "be necessary in aid of" the District Court's jurisdiction. Neither of such requisites is met by petitioners' action.

Even if it were to be assumed that the District Court had jurisdiction of petitioners' action, still the second exception has no application to the case at bar by reason of the impossibility of satisfying the second requisite above referred to. Petitioners' action was the only one before the District Court involving any of the subject matter of respondent's state court action. As disclosed by petitioners' complaint (R. 16-21), the sole relief sought in petitioners' action was an injunction to stay the state court action. It follows that the second exception can have no application under the assumption aforesaid because to apply it would be tantamount to holding that the District Court's staying of the state court action is necessary in aid of its jurisdiction to so act. Cf. *Capital Service, Inc. v. Labor Board*, 347 U. S. 501, in which this Court upheld a stay, at the instance of the Board, of a state court action on the ground that the second exception to Section 2283 had been met in that the injunction was necessary to aid the jurisdiction of the District Court in another pending action by the Board for an injunction under Section 10 (1) of the Labor Relations Act against certain conduct of the labor union which was also the defendant in the state court action.

Respondent further maintains, however, that the District Court is without jurisdiction in the case at bar. The National Labor Relations Act, as amended, contains express provisions which are set forth in the Appendix to petitioners' brief (pp. 45-49) and which are determinative of the occasions and instances when, and the conditions under which, a federal court may act with respect to any labor matter which is within the exclusive jurisdiction of the National Labor Relations Board, none of which has any application herein. Petitioners make no claim

that their action was brought pursuant to any provisions of the Act. Their complaint (R. 16-21) discloses that their claim as to jurisdiction of the District Court was predicated solely on Sections 1337 and 1651 (28 USC). The fact is, however, as stated in their brief, page 5, that they sought the injunction "on the ground that Richman's petition complained of matters within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction (R. 16-21)." If, therefore, as contended by petitioners, the subject matter of the state court action is within the exclusive jurisdiction of the Board, then by the same reasoning which allegedly deprives the state court of jurisdiction and vests it exclusively in the Board, the District Court is without any power or jurisdiction on application by petitioners, as distinguished from the Board, to stay the proceeding in the state court. It is from the provisions of the National Labor Relations Act, as amended, alone that the Board derives all of its exclusive jurisdiction with respect to labor matters covered by its terms. It is because of the same provisions that this Court has several times pointed out that not only state courts, but also federal courts, are deprived of jurisdiction with respect to matters within the exclusive jurisdiction of the Board, subject to the right and duty on the part of specified federal courts to act in such matters by way of review and upon application by the Board or its agent, as provided for in the Act (29 USC Supp. V, Sections 160 (e), (f), (j) and (l)). In *Garner v. Teamsters Union*, 346 U. S. 485, this Court in referring to the fact that the Act provides a complete means for the handling of labor matters covered thereby, said, page 489:

> "The power and duty of primary decision lies with the Board, not with us."

and then concluded as follows, page 491:

> "The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board, precludes state courts from doing so. Cf. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261."

It follows that, since the National Labor Relations Act, as amended, vests exclusive initial jurisdiction in the Board with respect to all matters covered by its terms, the Board's jurisdiction must be exclusive initially as to all actions and proceedings to protect or vindicate such jurisdiction. It also follows that with respect to petitioners' action, the District Court was without jurisdiction notwithstanding any such, as it might have had, except for the provisions of the Act, by reason of Sections 1337 and 1651, and that petitioners' action fails to satisfy either of the requisites to the second exception of Section 2283. These conclusions not only accord with the views of the District Court and of the Court of Appeals herein but are supported by *International Union v. Underwood Corp.* (C. A. 2, No. 182, Jan. 6, 1955) (not yet officially reported), 35 L. R. R. M. 2340; *Johnston v. Colonial Provision Co.* (D. C. Mass., No. 54-923-F, Dec. 28, 1954) (not yet officially reported), 35 L. R. R. M. 2308; and *International Union v. Wm. D. Baker Co.* (E. D. Pa.), 100 F. Supp. 773. The case at bar and the three cases last referred to are believed to comprise the only adjudicated cases,* involving Section 2283, in which a stay of state court

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* The Second Circuit Court of Appeals in the *Underwood Corp.* case above referred to reversed a judgment of the United States District Court, District of Connecticut, in No. 5186 (Dec. 8, 1954) (not yet officially reported), 35 L. R. R. M. 2337.

proceedings by a District Court was sought by one or more private parties on the ground that the subject matter of the state court action was vested exclusively in a government agency.

Sufficiently comparable factually with the instant case to merit their consideration herein are: *United Electrical v. Westinghouse Electric Corp.* (E. D. Pa.), 65 F. Supp. 420 and *Davega-City Radio, Inc. v. Boland* (S. D. N. Y.), 23 F. Supp. 969, although Section 265 rather than Section 2283 was involved in each. In each thereof (1) private parties were seeking injunctive relief, (2) claiming that a state court had no jurisdiction to proceed because of the provisions of the National Labor Relations Act, and (3) the jurisdiction of the District Court was invoked solely for the purpose of preventing further proceedings in the state court, and not in aid of jurisdiction of the District Court otherwise invoked, and in each of them it was held that Section 265 prohibited the District Court from granting the requested injunctive relief.

National Labor Relations Board v. New York State Labor Relations Board (S. D. N. Y.), 106 F. Supp. 749 (Ps.' Br. p. 37) offers no help herein because the injunctive relief therein was sought by the Board, not by private parties. In *Food, etc. Workers v. Smiley* (C. A. 3), 164 F. (2d) 922; *United Office etc. Workers v. Smiley* (N. D. Pa.), 77 F. Supp. 659; *Linde Air Products Co. v. Johnson* (D. Minn.), 77 F. Supp. 656; and *A. F. of L. v. Watson*, 327 U. S. 582 (all referred to in petitioners' brief, p. 39), no mention was made of Section 265 and apparently it was not involved in any thereof. Moreover, the case at bar is distinguishable from each of the cases last referred to for other reasons. Herein the petitioners sought the injunction on the sole ground that the subject matter of respondent's state court action constituted an invasion

of the exclusive jurisdiction of the National Labor Relations Board. No such comparable situation was present in any of the cited cases. For example, in the *Watson* case, the injunction that was sought was to enjoin state officials from instituting threatened proceedings to enforce a Florida Constitutional provision claimed to outlaw closed shop contracts and thus violate provisions of the Constitution of the United States.

The language from the opinion in the *Underwood* case, which is referred to in petitioners' brief (pp. 38-40) offers no support for their argument made with reference thereto. Such language was used with express relation to possible jurisdictional arguments which might have obtained had the action therein been brought by the National Labor Relations Board instead of by the labor union, and viewed in its proper context, it discloses that it was the court's view that any argument as to possible potential jurisdiction of a District Court to enjoin a state court interference with exclusive federal jurisdiction would obtain only where the injuctive relief is sought by a governmental agency having exclusive jurisdiction, and not by a labor union or other private party.

The very recent *Underwood* case not only fully supports the views of the District Court and of the Court of Appeals in the case at bar, but it stands as an authority opposed to every argument set forth in petitioners' brief, and it is therein pointed out that even though a "deplorable situation" may result from labor unions being prevented by Section 2283 from enjoining state court invasions of the jurisdiction of the National Labor Relations Board, as is contended for at length in petitioners' brief (pp. 19-28, 41-42), nevertheless Congress, not the courts, must be looked to for redress with respect to any such situation. This case also supports the Court of Appeals' view in the

case at bar that whether or not the subject matter of respondent's state court petition is all or in part within the Labor Board's jurisdiction presents only a collateral question not necessary to any proper determination of the matter before the Court. In this connection it is to be observed that in deciding in the cited case that Section 2283 prohibited the District Court from granting the injunction requested by the labor union, it was expressly assumed by the Court of Appeals that all of the subject matter of the state court action was within the exclusive jurisdiction of the Board.

3. The Third Exception.

Petitioners make no claim that the instant case is within the third exception and it needs therefore only brief, if any, attention. By its terms this exception applies only where the court by injunction stays proceedings in a state court "to protect or effectuate its judgments." Aside from denying a stay and a preliminary injunction herein (R. 24, 27), the only judgment rendered in this controversy by the District Court is its order remanding the removed action to the state court "for further proceedings" (R. 26, Finding 5) therein. Obviously, the requested preliminary injunction could not be necessary to protect or effectuate the judgment of remand,—on the contrary, it would result in a defeat thereof.

II.

PETITIONERS, HAVING SUBMITTED TO THE STATE COURT THE QUESTION AS TO THE EXCLUSIVE JURISDICTION OF THE LABOR BOARD, AND THE ISSUE HAVING BEEN DECIDED ADVERSELY TO THEM, SHOULD NOT BE PERMITTED IN THE CASE AT BAR TO OBTAIN IN THE DISTRICT COURT A REVIEW OF THE DECISION OF THE STATE COURT.

The record (R. 26-27) and petitioners' brief (pp. 4-5) disclose that petitioners moved the state court to dismiss respondent's action on the ground that the subject matter thereof was within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction. They further disclose that, after that motion (treated as a demurrer under Ohio procedure) was denied, petitioners instituted the action at bar to enjoin respondent from further prosecution of its state court action on identically the same ground, i.e., that respondent's petition complained of matters within the exclusive jurisdiction of the Board and that the state court was therefore without jurisdiction.

Under the circumstances, the case at bar amounts to a bill in equity in the District Court to review the order of the state court overruling petitioners' motion to dismiss, treated as a demurrer. This, the courts do not, and for elementary reasons should not, permit. *American Surety Co. v. Baldwin*, 287 U. S. 156, 164-167.

A closely comparable factual situation was present in *Davega-City Radio, Inc. v. Boland* (S. D. N. Y.), 23 F. Supp. 969, in which an employer was attacking the jurisdiction of a state board and certain courts. After the federal district court said it was powerless to grant the requested injunction because of Section 265, it further said (p. 970):

"There is also a further reason why the suit must be dismissed, namely, the principle that a decision of a state court may not be reviewed by bill in equity in a federal court. American Surety Co. v. Baldwin, 287 U. S. 156, 164, * * *; Lynch v. International Banking Corp., 9 Cir., 31 F. 2d 942, certiorari denied, 280 U. S. 571, * * *; Furnald v. Glenn, 2 Cir., 64 F. 49, 54; Ritholz v. North Carolina State Board, D. C. M. D. N. C. 18 F. Supp. 409, 413. Here the plaintiff has presented to the state court the same questions as to the jurisdiction of the state Board that it wishes this court to decide. The issue having been decided adversely to it, its remedy is appeal through the appropriate state courts and, if necessary, review by the Supreme Court of the United States. *It cannot obtain a review by this independent suit in the federal court.*"

That case was cited with approval in *General Exporting Co. v. Star Transfer Line* (C. A. 6), 136 F. (2d) 329, in which an interpleader suit in a Michigan state court had proceeded to pronouncement of a judgment before one of the parties commenced an action in a United States district court for an adjudication of title as to the subject of the state court action, and for an injunction against any further proceedings in the state court. The defendants filed a motion to dismiss the complaint in the federal court upon several grounds, including the ground that it improperly attempted to cause the district court to "act as an appellate court with respect to the Superior Court of Grand Rapids, Michigan" (pp. 331, 332). The district court granted a motion to dismiss the case (p. 332) and in affirming, the Court of Appeals said (p. 335):

"The attempt to relitigate in federal courts issues already determined in state court proceedings has been disapproved in numerous opinions of United States Courts below the grade of the Supreme Court.

Ritholz v. North Carolina State Board of Examiners in Optometry, D. C. N. C., 18 F. Supp. 409, 413 (three-judge court); Davega-City Radio v. Boland, D. C. N. Y., 23 F. Supp. 969, 970 (three-judge court); Hall v. Ames, 1 Cir., 190 F. 138, 140, 141; Furnald v. Glenn, 2 Cir., 64 F. 49, 54 * * *"

and further said (p. 335):

"* * * The Circuit Court of Appeals for the First Circuit, in the third case cited above, considered it certain that no power is vested in a federal trial court in an independent collateral proceeding to review a cause heard and determined by a state court of general jurisdiction to the end that the proceedings in the state court should be overthrown. Considerations of comity were also regarded as forbidding a review of the decision of the state court. In the last case listed, the Circuit Court of Appeals for the Second Circuit wrote: 'No authority has been cited for the proposition that one court of equity will undertake to annul *the interlocutory decree* of another court of equity; and there is no support for it upon principle or in good sense. The party complaining of such a decree has a sufficient remedy by applying to the court which made it, and it would be most unseemly, and an intolerable interference with the orderly administration of justice, for another court to assume to interpose.' We are in accord with these federal court opinions, and consider that, in dismissing the instant action, the District Court exercised sound discretion.

"No reason for reversal appearing, the judgment of the District Court is affirmed."

The courts which have decided questions involving facts substantially similar to those here presented have held that the appropriate forum for determination of the state courts' jurisdiction is that court, subject to appellate review in the state courts, and thereafter in this Court.

Thus, in *United Electrical, etc. v. Westinghouse Electric Corp.* (E. D. Pa.), 65 F. Supp. 420, the court said (p. 423):

> "In any event, this court cannot assume that a state court will act without regard to the applicable law and without due consideration for the rights of the petitioners here. The contrary is true, and is amply demonstrated by the cases: Park & Tilford Import Corp. v. International Brotherhood of Teamsters, supra, is exemplary. *Moreover, whether the particular proceeding is, in whole or in part, one within the jurisdiction of the state court, and whether that court has power to grant the remedy prayed for, are questions which may be capably determined by that court, and error is a matter of appellate review.* The question of jurisdiction, if at all involved, is appropriately one for the decision of the state court and could manifestly be presented and determined in the action there. Kohn v. Central Distributing Co., 1939, 306 U. S. 531, 534, 59 S. Ct. 689, 83 L. Ed. 965."

In *International Union v. William D. Baker Co.* (E. D. Pa.), 100 F. Supp. 773, there was cited with approval the statement in *H. J. Heinz Co. v. Owens*, 189 F. (2d) 505, 509, as follows (p. 777):

> "* * * Judge Hastie's language on that point in the Heinz opinion, 189 F. 2d at page 509, is appropriate at this point: 'We find no justification for prejudging the question or for assuming that the tribunal will not respect any controlling limitations upon its power. Cf. Adams v. Decoto, D. C. S. D. Cal. 1927, 21 F. 2d 221. But if it should err and a substantial federal question should be involved, there is open a course of review even to our highest court.' "

Also cited with approval therein was the statement in *United Electrical, etc. v. Westinghouse Electric Corp.*, 65 F. Supp. 420, which is above quoted.

CONCLUSION.

For the reasons previously herein stated, respondent respectfully submits that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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